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**IN THE
COURT OF APPEALS OF INDIANA**

A.P.,)
)
Appellant-Respondent,)
)
vs.) No. 49A05-0512-JV-703
)
STATE OF INDIANA,)
)
Appellee-Petitioner.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Geoffrey Gaither, Magistrate
Cause No. 49D09-0504-JD-1869 and 1870

August 28, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

At the age of fifteen, A.P. was adjudicated a delinquent child for committing acts that, if committed by an adult, would constitute class A felony robbery, two counts of class B felony robbery, three counts of class B felony confinement, class C felony battery, three counts of class D felony pointing a firearm, and two counts of class A misdemeanor carrying a handgun without a license. As a result, the juvenile court committed A.P. to the Department of Correction (the DOC) for one year. A.P. presents the following restated issues for review:

1. Did the juvenile court abuse its discretion by committing A.P. to the DOC rather than a less restrictive alternative placement?
2. Did the juvenile court issue an adequate dispositional order?

We affirm.

At about 11:00 p.m. on March 26, 2005, Leslie Keener returned to her apartment complex on North Meridian Street in Indianapolis and parked in the underground garage. As she started to exit the garage, a young male, later identified as A.P., pushed her back inside the garage, held a gun to her head, and demanded money. When Keener said she had no money, A.P. cocked the gun. She then gave A.P. approximately \$100 from her pocket. A.P. insisted that Keener had more money and pushed her to the ground.¹ He then sat on Keener and pressed the gun to her head as he went through her pockets for more money. He eventually found Keener's wallet, which had fallen to the ground. After pulling out the contents, A.P. took the money Keener had in her wallet,

¹ Keener's hip was injured during the attack. She explained that she was in "horrible" pain and was unable to walk without crutches for over three months. *Transcript* at 239.

approximately \$200. When Keener grabbed her insurance card and explained that she needed the money for medication, A.P. returned \$20 to her.

At some point, A.P. and Keener heard footsteps coming down the stairs to the garage. A.P. ordered Keener to stand up against the wall and not scream. Richard Anderson entered the garage, intending to retrieve a file from his car. A.P. put the gun to Anderson's head and demanded money. Anderson explained that he had no money because he had only come down for the file and that he only had his cell phone and keys. While still pointing the gun at Anderson, A.P. searched Anderson's pockets but found no money. He then took Anderson's phone and directed Anderson and Keener not to follow him. As A.P. ran away, Anderson saw him throw the cell phone over a fence. Anderson retrieved the phone and called 911.

Around noon on April 9, 2005, Jason Hall was about to leave his apartment building, which is close to the apartment complex where Keener and Anderson live. As he approached the exit, Hall heard loud footsteps running up behind him. He turned to see a young male, later identified as A.P., pointing a gun at him and demanding money. Hall handed over all the money he had, which was about \$25. A.P. demanded credit cards, but Hall did not have any. A.P. then wanted to be taken to Hall's apartment. He forced Hall onto the elevator while pointing the gun and warned Hall not to try anything or he would shoot. As they approached Hall's apartment, Hall suddenly ran into a nearby stairwell and down the stairs until he made his way outside. He then ran to his mother's home, where he called the police.

After each of the victims identified A.P. from a photo array, the State filed two delinquency petitions, each with multiple allegations, against A.P. on April 22, 2005. The State unsuccessfully sought to have A.P. waived to adult court. Thereafter, the juvenile court held a denial hearing on both petitions in October. The court entered true findings on all of the allegations as set forth above. On November 3, 2005, the juvenile court held a dispositional hearing on both causes and ordered A.P. to be committed to the DOC for a determinate sentence of twelve months. A.P. now appeals.

1.

A.P. initially argues that the juvenile court abused its discretion by committing him to the DOC. He claims there were other less restrictive dispositional alternatives available, such as placing him on a suspended commitment, which had not been tried with him in the past. A.P. asserts that he has a limited juvenile history and that he has responded affirmatively to previous interventions offered by the juvenile system.

The choice of a specific disposition of a juvenile adjudicated a delinquent child is within the sound discretion of the juvenile court, subject to the statutory considerations of the welfare of the child, the community's safety, and the policy of favoring the least harsh disposition. *M.Q.M. v. State*, 840 N.E.2d 441 (Ind. Ct. App. 2006); *see also* Ind. Code Ann. § 31-37-18-6 (West 1998). A juvenile disposition will not be reversed absent a showing of an abuse of discretion. Such abuse occurs when the juvenile court's action is clearly erroneous and against the logic and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions to be drawn therefrom. *M.Q.M. v. State*, 840 N.E.2d 441.

The statutory scheme for dealing with juveniles is markedly different from the statutory scheme for sentencing adults who commit crimes. *E.H. v. State*, 764 N.E.2d 681 (Ind. Ct. App. 2002), *trans. denied*. American society favors individual diagnosis and treatment of juvenile offenders. “It is therefore the policy of this State to ensure that children within the juvenile justice system are treated as persons in need of care, protection, treatment, and rehabilitation.” *Id.* at 685 (internal quotations omitted). In this vein, I.C. § 31-37-18-6 specifically provides:

If consistent with the safety of the community and the best interest of the child, the juvenile court shall enter a dispositional decree that:

(1) is:

(A) in the least restrictive (most family like) and most appropriate setting available; and

(B) close to the parents’ home, consistent with the best interest and special needs of the child;

(2) least interferes with family autonomy;

(3) is least disruptive of family life;

(4) imposes the least restraint on the freedom of the child and the child’s parent, guardian, or custodian; and

(5) provides a reasonable opportunity for participation by the child’s parent, guardian, or custodian.

While “a juvenile court has wide latitude and great flexibility in dealing with juveniles, its goal is to rehabilitate rather than to punish.” *E.H. v. State*, 764 N.E.2d at 685.

Commitment to the DOC should be resorted to only if less severe dispositions are inadequate. *E.L. v. State*, 783 N.E.2d 360 (Ind. Ct. App. 2003). We observe, however, that a short term of confinement can serve many functions, not all of them punitive in nature. *S.C. v. State*, 779 N.E.2d 937 (Ind. Ct. App. 2002), *trans. denied*. Further, although options other than commitment to the DOC are available, there are times when

commitment to a suitable public institution is in the best interest of the juvenile and of society. *Id.*

In the instant case, the probation department strongly recommended commitment of A.P. to the DOC. The juvenile court adopted this recommendation and committed A.P. to one year in the DOC. In doing so, the court specifically recognized that A.P. did not have a lengthy juvenile history. He had two prior delinquency petitions filed when he was fourteen, which resulted in a true finding for the misdemeanor offense of criminal conversion. Soon after he successfully completed informal home detention and formal probation in November 2004, however, A.P. committed three armed robberies on two different days. Apparently perplexed by the rapid progression of A.P.'s delinquent behavior, the juvenile court observed the seriousness of the instant offenses: “[A.P.], the offenses that you committed, really they don’t get much more serious than this. You put yourself at great risk, not to mention the victims in this matter.” *Transcript* at 467. The court, as well as the probation department, also found A.P.'s behavior while confined during the pendency of the delinquency proceeding to be of concern, as he had received five critical incident reports for “fighting, threatening, cursing staff, intimidation, and inappropriate touching.” *Appellant’s Appendix* at 151.

We simply cannot find that the juvenile court abused its discretion in determining that commitment to the DOC was the only adequate alternative under the circumstances. It was within the juvenile court’s discretion to determine that such a disposition was consistent with the safety of the community and the best interest of the child.

The evidence reveals A.P. has been traveling down a dangerous path, as his delinquency had significantly escalated over the period of a year.² He has already placed three individuals and himself at great risk of harm. The trial court was not required to place the community's safety further at risk. Moreover, the one-year commitment will ensure that A.P. receives, in a secure environment, the rehabilitative counseling that he needs in order to address his behavioral issues.

2.

A.P. also contends that the juvenile court failed to issue an adequate dispositional order with specific findings and conclusions as required by I.C. § 31-37-18-9 (West 1998). A.P. acknowledges that the juvenile court expressly adopted the findings and information contained in the predispositional report prepared by the probation department. He claims, however, that this was an abuse of discretion because the report “focused more on A.P.’s failure to confess to the crimes rather than offering evidence that would assist the trial court in determining the factors required by the juvenile code.” *Appellant’s Brief* at 13. Thus, A.P. claims the report seeks to punish him for maintaining his innocence.

² Contrary to A.P.’s assertions on appeal, the facts of the instant case are nothing like the facts of *D.P. v. State*, 783 N.E.2d 767 (Ind. Ct. App. 2003). In *D.P.*, the juvenile committed two non-violent acts that would constitute class D felony fraud (for using another’s credit card without authority) and theft (for taking mail out of another’s mailbox and throwing it away) if committed by an adult. The juvenile court committed D.P. to the DOC for six months. On appeal, the disposition was reversed as overly harsh. In concluding that a suspended commitment should have been imposed, as recommended by the probation department, this court observed special circumstances such as D.P.’s diminished cognitive capacity. The court further noted that D.P. had only one prior contact with the juvenile system, which was five years earlier when he was ten years old. D.P. completed probation for the earlier conduct and then “stayed out of trouble for five years.” *Id.* at 771. Finally, the court observed that D.P.’s conduct did not rise to the “level of repetitive and serious misconduct” of that found in other cases. *Id.*

Initially, we cannot agree that the focus of the predispositional report was on A.P.'s failure to confess or express remorse or that the report sought to punish him for maintaining his innocence. On the contrary, the nine-page report contained a great deal of information relevant to the juvenile court's decision, with only a small portion addressing A.P.'s lack of remorse and denial of wrongdoing. Moreover, A.P. fails to adequately support his implied contention that a juvenile court is precluded from considering such information in determining the appropriate disposition.

A.P. has also failed to establish his general claim that the dispositional order entered by the juvenile court was inadequate. I.C. § 31-37-18-9 provides:

The juvenile court shall accompany the court's dispositional decree with written findings and conclusions upon the record concerning the following:

- (1) The needs of the child for care, treatment, rehabilitation, or placement.
- (2) The need for participation by the parent, guardian, or custodian in the plan of care for the child.
- (3) The court's reasons for the disposition.

A.P. claims the juvenile court "made no specific findings or conclusions" as required by the statute. *Appellant's Brief* at 11. We cannot agree.

In addition to specifically incorporating the findings and information contained in the predispositional report,³ the court further found in its order that A.P. had a prior history of delinquency and noted the previous dispositional alternatives utilized by the court. The court found that A.P.'s present delinquent behavior was heinous or of an

³ A.P. does not expressly take issue with the court's method of incorporating information into its order and making that information the findings of the court. Further, we observe that, effective July 1, 2006, the legislature has amended I.C. § 31-37-18-9 to state that the juvenile court "may incorporate a finding or conclusion from a predispositional report as a written finding or conclusion upon the record in the court's dispositional decree." *See* P.L. 146-2006, § 56.

aggravating character and that commitment to the DOC was the least restrictive alternative to insure A.P.'s welfare and rehabilitation. Based on the predispositional report and the dispositional hearing, the court then concluded that A.P. was in need of care, treatment, rehabilitation, or placement and that the child's mother needed to participate in the plan of care or treatment. The court's statements at the conclusion of the dispositional hearing further reveal that the disposition was based in large part on the seriousness of the offenses, as well as A.P.'s troublesome behavior while being detained during the pendency of the juvenile proceedings.

We conclude that the juvenile court adequately set forth its reasons for the disposition of commitment to the DOC. *See K.A. v. State*, 775 N.E.2d 382 (Ind. Ct. App. 2002) (finding juvenile court issued sufficient written findings where it incorporated information from other reports and issued an order that was substantially similar to the instant order), *trans. denied*.

Judgment affirmed.

MATHIAS, J., and BARNES, J., concur.